IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.879 and 880 of 2007

Commissioner of Income Tax,
Coimbatore. ..Appellant in both the T.Cs.

Vs

B.Amrithalakshmi ..Respondent in both the T.Cs.

Appeals under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras Bench 'B', Chennai in I.T.A. Nos.2043 & 2044(Mds)/96 dated 24.04.2002 for the assessment years 1992-93 and 1993-94. against ITA No.924-C & 923-C/95-96 on the file of the Commissioner of Income Tax, Coimbatore, in PA.No.PT.6018/Cont.I/CBE dated 16.2.1996 on the file of the Asst Commissioner of Income Tax Coimbatore.

For Appellant : Mrs.Pushya Sitaraman,
Sr.Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

These appeals are filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Madras Bench 'B', Chennai in I.T.A. Nos.2043 & 2044(Mds)/96 dated 24.02.2002 raising the following substantial questions of law:-

> 1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the switch over from valuation as per market price to cost price was correct, being a substitution of one method by another

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scientific method?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee was right in changing over the method of valuation, when it does not reflect the true picture of profits and gains?

2. The facts leading to the above substantial questions of law are as under:

The assessee is a dealer in shares. The relevant assessment years are 1992-93 and 1993-94 and the corresponding accounting years ended on 31.03.1992 and 31.03.1993 respectively. For the assessment year 1992-93, the assessee filed Return of income on 24.02.1994 admitting a total income of Rs.3,85,540/-. The Return was processed under Section 143(1)(a) of the Income-tax Act ("Act" in short) and notice under Section 143(2) was issued. Later the assessment was finalised under Section 143(3) of the Act determining the total income at Rs.11,91,910/-. For the assessment year 1993-94, the assessee filed Return of income on 01.02.1995 admitting total income of Rs.3,23,960/-. The Return was processed under Section 143(1)(a) of the Act and notice under Section 143(2) was issued. The assessment was completed as "N.A." for the said assessment year. For both the assessment years, the assessee changed the method of valuation of closing stock of shares from market price to cost price. The Assessing Officer was of the view that the valuation of the shares held as stock in trade has to be valued at market price only as against the claim of the assessee to value at cost. Aggrieved by the orders, the assessee filed appeals to the Commissioner of Income-tax (Appeals). The C.I.T.(A) decided the cases in favour of the assessee and held that the valuation of the shares held as stock in trade by the assessee is correct. Aggrieved, the Revenue filed appeals to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeals and confirmed the orders of the C.I.T.(A). Hence the Revenue preferred the present tax cases.

3. Learned Standing Counsel appearing for the Revenue submitted that the Tribunal erred in approving the irregular adoption of change in method of valuation of shares held as stock in trade from market price to cost price. It is also submitted that the change in valuation does not result in the determination of the true profits for tax purpose and the same is arbitrary and does not give a true picture of the profit and hence the order of the Assessing Officer is in accordance with law.

4. Heard the counsel. The Tribunal as well as the C.I.T. (A) have given a finding that the changed method has been regularly followed by the assessee and it is only a substitution

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of one method by another scientific method. The first appellate authority considered the matter in detail and held as follows:-

> "2. Shri G.Sarangan, Advocate and Shri R.Mahadevan, Chartered Accountant appearing before me on behalf of the appellant have very strongly objected to the action of the assessing authority. And in my opinion, their contentions are well founded also. As regards the decision in 111-ITR-53 relied on by the Assistant Commissioner, the facts are clearly not applicable to the present case. It cannot certainly be said that the method adopted by the assessee in this case does not result in the determination of the true profits. Valuation of stock at cost price, market price, or the lesser of the cost price or market price are all accepted and established principles of accountancy. If an assessee follows such a method regularly, it cannot be said that it is improper. The question then is whether there was sufficient reason or justification for departing from the method followed earlier. First of all it must be noted that the assessment year 91-92 was the first year of business for the assessee and therefore there is no meaning in saying that the method of valuation followed for that year was the method which was being hitherto adopted by the assessee. Such a valuation had been adopted for a solitary year. The reason for the change had also been satisfactorily explained by the assessee. Due to wide range of fluctuation in the share price during February, 92 to June, 92, the value of shares held as stock as on 31-3-92 would have been artificially boosted and abnormally high if it had been valued at market price; it would not have reflected the correct position. It was because of this that the appellant switched over to valuation at cost price which was more realistic. Incidentally, the learned representatives also point out to me that the market price which was adopted for assessment year 90-91 was less than the cost price for that year and the cost price which has been adopted consistently from assessment year 92-93 onwards has been less than the market price. Thus the value adopted for all the years has been actually

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the lesser of the cost price or market price. As regards the decision cited by the assessing authority as reported in 171-ITR-8, there is clearly a mistake in the citation. There is no such decision in 171-ITR. The name of the case has also not been quoted by the Officer. However, the actual ratio of the decision relied on by the assessing authority was to the effect that an assessee cannot be allowed to arbitrarily change the method of accounting to suit its purposes. This decision has clearly no relevance here since the appellant has not resorted to such an arbitrary change. Instead, I must observe that an assessee is entitled to adopt valuation at cost price or market price or the lesser of cost or market price. This does not mean that the choice once made by the assessee can never be changed thereafter. An assessee can certainly change the method if it is bona fide and it is regularly followed thereafter. There are several decisions in support of this view. In Melmould Corporation vs. CIT (202-ITR-789) the Bombay High Court has categorically held that irrespective of the basis adopted for valuation in the earlier years, an assessee can change the method of valuation provided such changed method is an accepted principle of accountancy and such changed method is regularly followed thereafter. It is true that the change effected should not be casual, for temporary gain, or for temporary purposes restricted to one year. The Court also held that there was no merit in the argument that in the event of a change in the method of valuation, the opening stock should have also been suitably revalued. The value of opening stock cannot be disturbed merely because the closing stock is valued on a different method. The value of opening stock for this year has to be necessarily the value of closing stock for the earlier year. It is true that in the year of change of method of valuation of closing stock there is bound to be some anomaly; but that will get absorbed in course of time as the new method is going to be applied on a permanent basis thereafter. In the absence of any finding to the effect

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> that the assessee had resorted to an ad hoc change in valuation merely to secure any temporary gain or advantage, I hold that the assessee is entitled to change the method of valuation of closing stock especially because the new method adopted is based on sound principles of accountancy and the Chartered Accountant has also submitted that the changed method has been regularly followed from this year onwards. I therefore delete the addition of Rs.7,12,280/- made on this account for the assessment year 92-93."

The above finding given by the C.I.T.(A) was confirmed by the Tribunal. It is also seen that the assessee's first year of business was the assessment year 1991-92 and for the said year, the assessee valued the closing stock of shares at the market value as this was less than the cost price. From the assessment year 1992-93, the assessee changed the method of valuation to cost price as that happened to be less than the market price. Further it is seen that there is no finding to the effect that the assessee had resorted to an adhoc change in valuation merely to secure any temporary gain or advantage. The concurrent findings given by the first appellate authority as well as the Tribunal are based on valid materials and evidence. Recently, the Supreme Court in the case of Commissioner of Income-tax Vs. P.Mohanakala (291 ITR 278) held that whenever there is a concurrent factual finding by the authorities below, the same should be accepted and no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

5. In view of the foregoing reasons, no substantial questions of law arise for consideration of this Court and accordingly, the tax cases are dismissed. No costs.

km

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Madras Bench 'B',
   Chennai.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals),
   Coimbatore.

4. The Assistant Commissioner of Income-tax,
   Central Circle-I, Coimbatore.

+ 1 cc to M/s. Pushpa sitaraman, SCGS Counsel CCSR 31672

MBS(CO)
SR/18.6.2007

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